

Nos. 11-56986, 12-55429

**IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

SGT. JEFFREY S. SARVER

Plaintiff / Appellant

versus

NICOLAS CHARTIER, SUMMIT ENTERTAINMENT, LLC, KATHRYN BIGELOW,
THE HURT LOCKER, LLC, MARK BOAL, GREG SHAPIRO, VOLTAGE PICTURES,
LLC, GROSVENOR PARK MEDIA, L.P., KINGSGATE FILMS, INC., TONY MARK,
DONALL MCKLUSKER, AND FIRST LIGHT PRODUCTIONS, INC.

Defendants / Appellees

Appeal from U.S. District Court, Central District of California
The Honorable Jacqueline H. Nguyen
U.S.D.C. Case No. 2:10-cv-09034-JHN-JC

APPELLEES' SUPPLEMENTAL EXCERPTS OF RECORD

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SUPPLEMENTAL EXCERPTS OF RECORD

<u>Dist. Ct. Dkt. No.</u>	<u>Document Title</u>	<u>Date</u>	<u>Pages</u>
49-1	Certification Of Barry Tyerman In Support Of Kingsgate Films, Inc.'s Motion To Dismiss (F.R.C.P. 12(b)(2))	07/26/10	1 - 3
20-3	Declaration Of Kathryn Bigelow	06/15/10	4 - 5
15-2	Certification Of Mark Boal In Support Of Defendants' Motion To Dismiss	06/01/10	6 - 7
15-3	Certification Of Nicolas Chartier In Support Of Defendants' Motion To Dismiss	06/01/10	8 - 12
15-5	Certification Of William Lewis In Support Of Defendants' Motion To Dismiss	06/01/10	13 - 18

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**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

SGT. JEFFREY S. SARVER,

Plaintiff,

v.

THE HURT LOCKER, LLC, MARK
BOAL, KATHRYN BIGELOW, GREG
SHAPIRO, NICOLAS CHARTIER,
TONY MARK, DONALL
McCUSKER, SUMMIT
ENTERTAINMENT, LLC, VOLTAGE
PICTURES, LLC, GROSVENOR
PARK MEDIA, LP, FIRST LIGHT
PRODUCTIONS, INC., KINGSGATE
FILMS, INC., and PLAYBOY
ENTERPRISES, INC., Jointly and
Severally,

Defendants.

Civil Action No. 10-1076 (DMC) (JAD)

Hon. Dennis M. Cavanaugh

Electronically Filed Document

Oral Argument Requested

**CERTIFICATION OF
BARRY TYERMAN
IN SUPPORT OF KINGSGATE
FILMS, INC.'S MOTION TO
DISMISS (F.R.C.P. 12(b)(2))**

BARRY TYERMAN, of full age, hereby certifies and says:

1. I am Assistant Secretary for Kingsgate Films, Inc. ("Kingsgate"), a defendant in this action. I have personal knowledge of the facts set forth herein.

2. I am personally and directly involved with the on-going business operations of Kingsgate.

3. Kingsgate is a corporation organized and existing under the laws of the State of California. Kingsgate's offices are located in Los Angeles, California.

4. Kingsgate does not have any offices outside of the State of California.

5. To the best of my knowledge and recollection, Kingsgate has not participated in the production of any motion picture in which any part of that motion picture was undertaken within the State of New Jersey.

6. To the best of my knowledge and recollection, Kingsgate has not conducted business of any kind in New Jersey, including that Kingsgate has not conducted or participated in a meeting in New Jersey, produced or distributed any goods, or performed any services in New Jersey. Kingsgate does not own property in New Jersey, and neither does it have any offices, facilities, or employees in New Jersey.

7. Kingsgate does not have a registered agent for service of process in New Jersey, is not licensed to transact business in New Jersey, and does not

transact business in this state. Kingsgate does not pay taxes of any kind to the State of New Jersey.

8. I certify under penalty of perjury that the foregoing is true and correct.

A handwritten signature in black ink, appearing to be 'B. Tyerman', written over a horizontal line.

BARRY TYERMAN

Executed on July 26, 2010

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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY**

SGT. JEFFREY S. SARVER,

Plaintiff,

v.

THE HURT LOCKER, LLC, MARK
BOAL, KATHRYN BIGELOW, GREG
SHAPIRO, NICOLAS CHARTIER,
TONY MARK, DONALL McCUSKER,
SUMMIT ENTERTAINMENT, LLC,
VOLTAGE PICTURES, LLC,
GROSVENOR PARK MEDIA, LP,
FIRST LIGHT PRODUCTIONS, INC.,
KINGSGATE FILMS, INC. and
PLAYBOY ENTERPRISES, INC., Jointly
and Severally,

Defendants.

HON. DENNIS M. CAVANAUGH

CIVIL ACTION NO. 2:10-cv-01076

Oral Argument Requested

(Filed Electronically)

**DECLARATION OF
KATHRYN BIGELOW**

I, Kathryn Bigelow, of full age, hereby declare as follows:

1. I am a Defendant in this action and have personal knowledge of the facts set forth herein.

2. I directed the 2009 motion picture "The Hurt Locker."

3. I reside in Los Angeles, California, and I conduct business in the State of California.

4. I have not transacted business of any kind or participated in any meeting within the State of New Jersey.

5. I have not performed any services within the State of New Jersey.

6. I am not employed by a company that is incorporated, maintains offices or conducts business within the State of New Jersey.

7. I do not vote, own property or pay taxes in New Jersey, nor do I have any telephone listing or bank account within the State of New Jersey.

8. All of the decision-making and contracts with respect to the making of "The Hurt Locker" occurred outside the State of New Jersey.

9. All of the filming and production of "The Hurt Locker" took place outside the State of New Jersey; it was filmed in Jordan and Canada and was produced in California.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on June 4, 2010



KATHRYN BIGELOW

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-and-

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**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

SGT. JEFFREY S. SARVER,

Plaintiff,

v.

**THE HURT LOCKER, LLC, MARK
BOAL, KATHRYN BIGELOW, GREG
SHAPIRO, NICOLAS CHARTIER,
TONY MARK, DONALL
McCUSKER, SUMMIT
ENTERTAINMENT, LLC, VOLTAGE
PICTURES, LLC, GROSVENOR
PARK MEDIA, LP, FIRST LIGHT
PRODUCTIONS, INC., KINGSGATE
FILMS, INC., and PLAYBOY
ENTERPRISES, INC., Jointly and
Severally,**

Defendants.

Civil Action No. 10-1076 (DMC) (MF)

Hon. Dennis M. Cavanaugh

Electronically Filed Document

Oral Argument Requested

**CERTIFICATION OF
MARK BOAL IN SUPPORT OF
DEFENDANTS' MOTION TO
DISMISS**

MARK BOAL, of full age, hereby certifies and says:

1. I have been named as a defendant in this action. I have personal knowledge of the facts set forth herein.
2. I am currently a resident of Los Angeles County, California. I am *not* currently a resident of New York, as Plaintiff alleges in his Complaint.
3. I certify under penalty of perjury that the foregoing is true and correct.



MARK BOAL

Executed on May 30, 2010

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**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

SGT. JEFFREY S. SARVER,

Plaintiff,

v.

THE HURT LOCKER, LLC, MARK
BOAL, KATHRYN BIGELOW, GREG
SHAPIRO, NICOLAS CHARTIER,
TONY MARK, DONALL
McCUSKER, SUMMIT
ENTERTAINMENT, LLC, VOLTAGE
PICTURES, LLC, GROSVENOR
PARK MEDIA, LP, FIRST LIGHT
PRODUCTIONS, INC., KINGSGATE
FILMS, INC., and PLAYBOY
ENTERPRISES, INC., Jointly and
Severally,

Defendants.

Civil Action No. 10-1076 (DMC) (MF)

Hon. Dennis M. Cavanaugh

Electronically Filed Document

Oral Argument Requested

**CERTIFICATION OF
NICOLAS CHARTIER IN
SUPPORT OF DEFENDANTS'
MOTION TO DISMISS**

NICOLAS CHARTIER, of full age, hereby certifies and says:

1. I am a defendant in this action and have personal knowledge of the facts set forth herein.

2. I reside in Los Angeles, California, and I conduct business in the State of California.

3. I am the Chief Executive Officer and registered agent for service of process for defendant Voltage Pictures, LLC ("Voltage"). I am personally and directly involved with the on-going business operations of Voltage, and have been since the inception of the company.

4. Voltage is organized and exists under the laws of the State of California as a Limited Liability Company, formed on or about March 17, 2005. Voltage's offices are located in Los Angeles, California.

5. Voltage does not have any offices outside of the State of California.

6. I am the Secretary and registered agent for service of process for defendant The Hurt Locker, LLC ("Hurt Locker"). I am personally and directly involved with the on-going business operations of Hurt Locker, and have been since the inception of the company.

7. Hurt Locker is organized and exists under the laws of the State of California as a Limited Liability Company, formed on or about March 20, 2007. Hurt Locker's offices are located in Los Angeles, California.

8. Hurt Locker does not have any offices outside of the State of California.

9. Hurt Locker produced the 2009 motion picture, "The Hurt Locker." Voltage was the foreign sales agent on the "The Hurt Locker."

10. No part of the production of the film "The Hurt Locker" took place in the State of New Jersey. No foreign sales on the film "The Hurt Locker" took place in the State of New Jersey. Principal photography took place internationally in Jordan, with some secondary footage shot in Canada. Pre-production, domestic production work, and post-production work for the film was performed in Southern California.

11. Neither Hurt Locker nor Voltage has ever participated in the production of any motion picture in which any part of that motion picture was undertaken within the State of New Jersey.

12. In fact, Hurt Locker is a single purpose entity, organized for the sole purpose of producing "The Hurt Locker."

13. "The Hurt Locker" was initially screened at film festivals outside the U.S. It was later introduced into U.S. markets in Los Angeles and New York. The

film eventually had a limited release throughout the U.S., which included only a handful of theaters in New Jersey. Specifically, I am informed and believe that the film was screened at approximately two dozen theaters in New Jersey during July and August, 2009.

14. Neither Hurt Locker nor Voltage was responsible for or participated in the distribution of "The Hurt Locker."

15. Neither Hurt Locker nor Voltage conducts business of any kind in the State of New Jersey. Neither of these companies has ever conducted or participated in a meeting within the State of New Jersey. Neither has produced or distributed any goods, or performed any services in New Jersey. Neither of them owns property in New Jersey, and neither have any offices, facilities, or employees in New Jersey.

16. Hurt Locker and Voltage have no resident agents for service of process in New Jersey, are not licensed to transact business in New Jersey, and do not transact business in that state. Neither Hurt Locker nor Voltage pay taxes of any kind to the State of New Jersey.

17. Likewise, I personally have virtually no contacts with the State of New Jersey. I am a resident of the State of California, and I conduct business in that state.

18. To the best of my knowledge, I have never conducted business of any kind within the State of New Jersey. Indeed, I have never traveled to the State of New Jersey, for business or for pleasure.

19. I am not employed by a company that is incorporated, maintains offices, or conducts business in New Jersey, and I have never paid taxes to that State.

20. I certify under penalty of perjury that the foregoing is true and correct.



NICOLAS CHARTIER

Executed on May 28, 2010

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**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

SGT. JEFFREY S. SARVER,

Plaintiff,

v.

THE HURT LOCKER, LLC, MARK
BOAL, KATHRYN BIGELOW, GREG
SHAPIRO, NICOLAS CHARTIER,
TONY MARK, DONALL
McCUSKER, SUMMIT
ENTERTAINMENT, LLC, VOLTAGE
PICTURES, LLC, GROSVENOR
PARK MEDIA, LP, FIRST LIGHT
PRODUCTIONS, INC., KINGSGATE
FILMS, INC., and PLAYBOY
ENTERPRISES, INC., Jointly and
Severally,

Defendants.

Civil Action No. 10-1076 (DMC) (MF)

Hon. Dennis M. Cavanaugh

Electronically Filed Document

Oral Argument Requested

**CERTIFICATION OF
WILLIAM LEWIS IN SUPPORT OF
DEFENDANTS' MOTION TO
DISMISS**

0013

WILLIAM LEWIS, of full age, hereby certifies and says:

1. I am employed by Summit Entertainment, LLC ("Summit"), which has been named as a defendant in this action. I have personal knowledge of the facts set forth herein.

2. Summit is a worldwide theatrical motion picture development, financing, production and distribution studio that handles all aspects of marketing and distribution for both its won internally developed motion pictures as well as acquired films.

3. I am Executive Vice President, General Sales Manager, Domestic Theatrical Distribution for Summit. My duties include responsibility for domestic theatrical distribution of the motion pictures distributed by Summit in the United States.

4. Summit was and is the exclusive distributor of the motion picture "The Hurt Locker" in the United States

5. In the course and scope of its ordinary and regular business practices, Summit collects and maintains accurate information regarding, among other things, the theatrical exhibitions of the motion pictures it distributes. From that information, it can be determined in what theaters each motion picture was exhibited during each week of its theatrical release.

6. In preparing this certification, I reviewed Summit's business records regarding the theatrical exhibition of "The Hurt Locker" in the State of New Jersey for the months of July and August, 2009. Those records reflect that the earliest theatrical exhibition of "The Hurt Locker" in the State of New Jersey was on July 10, 2009, at which time it commenced exhibition in five theaters.

7. Summit's records further reflect that during the months of July and August, 2009, "The Hurt Locker" was exhibited in a total of 26 theaters in the State of New Jersey. In many instances, the theater exhibited this motion picture for no longer than one or two weeks; in other instances, the exhibition period lasted for five weeks and, occasionally, for longer than that.

8. Attached hereto as Exhibit "A" is a table that accurately summarizes Summit's information concerning the theatrical exhibitions of "The Hurt Locker" in the State of New Jersey from its earliest release through August 2009.

9. I certify under penalty of perjury that the foregoing is true and correct.


WILLIAM LEWIS

Executed on May 28, 2010

EXHIBIT “A”

THE HURT LOCKER

THEATER EXHIBITIONS IN NEW JERSEY DURING JULY-AUGUST 2009

Week	No. of Theaters	Location & Duration of Run
July 10, 2009 ¹	5	Montclair – 5 wks -- through 8/13
		Red Bank – 5 wks – through 8/13
		Rocky Hill – 7 wks – through 8/27
		Voorhees – 5 wks – through 8/13
		Edgewater – 5 wks – through 8/13
July 17, 2009	0 (5 total)	No additional theaters added
July 24, 2009	1 (6 total)	Northfield – 5 wks – through 8/27
July 31, 2009	10 (16 total)	Cherry Hill – 2 wks – through 8/13
		Hamilton – 2 wks – through 8/13
		New Brunswick – 3 wks – through 8/20
		Rockaway – 2 wks – through 8/13
		Toms River – 2 wks – through 8/13
		Wayne – 2 wks – through 8/13
		Cranford – 3 wks – through 8/20
		Maplewood – 9 wks – through 10/1
		East Windsor – 3 wks – through 8/20

¹ The earliest release of the motion picture in New Jersey occurred on July 10, 2009. Note that “weeks” for purposes of motion picture exhibition begin on Fridays and end on the following Thursdays.

Week	No. of Theaters	Location & Duration of Run
		Sewell – 1 wk – through 8/6
August 7, 2009	3 (18 total) ²	Somerdale – 1 wk – through 8/13 Teaneck – 3 wks – through 8/27 Turnersville – 1 wk – through 8/13
August 14, 2009	2 (9 total) ³	Tenafly – 1 wk – through 8/20 Hawthorne – 1 wk – through 8/20
August 21, 2009	3 (7 total) ⁴	Bergenfield – 1 wk – through 8/27 Caldwell – 1 wk – through 8/27 Madison – 3 wks – through 9/10
August 28, 2009	0 (2 total) ⁵	No additional theaters added
September 4, 2009	2 (4 total)	North Bergen – 1 wk – through 9/10 Vineland – 1 wk – through 9/10

² One theater ended its run on August 6 (Sewell).

³ Eleven theaters ended their run on August 13 (Montclair, Red Bank, Voorhees, Edgewater, Cherry Hill, Hamilton, Rockaway, Toms River, Wayne, Somerdale, and Turnersville).

⁴ Five theaters ended their run on August 20 (New Brunswick, Cranford, East Windsor, Tenafly and Hawthorne).

⁵ Five theaters ended their run on August 27 (Rocky Hill, Northfield, Teaneck, Bergenfield and Caldwell).

PROOF OF SERVICE

STATE OF CALIFORNIA)
)
COUNTY OF LOS ANGELES)

I am employed in the County of Los Angeles, State of California; I am over the age of 18 and not a party to the within action; my business address is 9601 Wilshire Boulevard, Suite 700, Beverly Hills, California 90210.

On August 22, 2012, I served the documents described as APPELLEES' SUPPLEMENTAL EXCERPTS OF RECORD on the interested parties in said action by placing a true copy thereof in a sealed envelope(s) addressed as follows:

See Attached Service List

BY MAIL:

I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice, it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid at Los Angeles, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one date after date of deposit for mailing the affidavit.

Executed on August 22, 2012, at Los Angeles, California.

I declare under penalty of perjury under the laws of the United States Of America that the foregoing is true and correct.


Janice J. Mills

SERVICE LIST

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